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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,133	10/31/2003	Parris Wellman	ETH5106	3471
27777	7590	11/15/2005	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			PEFFLEY, MICHAEL F	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/699,133	<b>Applicant(s)</b> WELLMAN ET AL.	
	<b>Examiner</b> Michael Peffley	<b>Art Unit</b> 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-16 is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10-31/03</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

Art Unit: 3739

### ***Specification***

The disclosure is objected to because of the following informalities: the specification makes reference to another copending application, but fails to provide the US Serial Number. See, for example, pages 8 and 16 of the specification.

Appropriate correction is required.

### ***Drawings***

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings filed October 31, 2003 appear to be informal.

Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings.

The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6 are rejected under 35 U.S.C. 102(a) and/or 35 U.S.C. 102 (e) as being anticipated by Wellman et al (6,616,661).

Art Unit: 3739

Wellman et al disclose a surgical device for the harvesting, clamping and coagulation of tissue comprising a shaft (104) having a lumen and a first slot (106) at a distal end. The shaft is movable between rearward and forward positions using the handle (100). That is, the handle may be used to insert or withdraw the device, including the sheath. An anvil (108) is slidingly disposed in the first slot between open and closed positions to capture tissue, and there is at least one electrode for applying RF energy to the tissue captured in the slot (see col. 5, lines 18+). The actuator (i.e. handle) is also connected to the anvil and a sliding knife (114) via button (200). The cutting blade is slidable within the lumen between open and closed positions, and is also connected to the RF energy source (col. 5, lines 18+). The method of capturing and severing tissue is fully disclosed by Wellman et al. Wellman et al also disclose a retractor (304 – Figure 9) that connects the surgical device. The retractor includes a working head (316) and a manipulator (i.e. interior surface and edges of the head) and is releasably engageable with the surgical device (104). The shaft (310) of the retractor and the tube (104) of the surgical are movable with respect to each other such that the tube may be disposed in the working space.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wellman et al ('661) in view of the teaching of Evans et al (6,193,653).

The Wellman et al device has been addressed previously. Wellman et al fail to disclose two discrete manipulators on the retractor device.

Evans et al disclose an analogous retractor assembly for use with a surgical tool for harvesting veins. In particular, the Evans et al retractor is provided with two separate manipulators (33,44) on the working head for retaining the device in place and receiving blood vessels.

To have provided the Wellman et al retractor with two manipulator located on the working head to retain the device in place and receive a blood vessel to be harvested would have been an obvious modification for one of ordinary skill in the art in view of the teaching of Evans et al.

### ***Allowable Subject Matter***

Claims 8-16 are allowed. While Wellman et al disclose a retractor and surgical instrument assembly as set forth in the apparatus claims, there is no specific mention of the steps of moving the manipulator from a stowed to an extended position to manipulate tissue, and then moving the tube from a rear position to a forward position to capture and treat tissue as recited in independent claim 8.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. McClurken et al (6,558,385), Ryan et al (6,224,593), Schulze et al (6,572,615) and Abele et al (5,190,541) all disclose various devices for clamping,

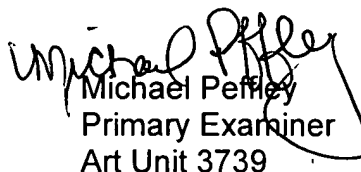
Art Unit: 3739

cutting and coagulating blood vessels. Hess et al (6,592,604) and Weadock et al (6,527,771) disclose vein harvesting devices including a dissector/retractor connected to a surgical device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Peffley whose telephone number is (571) 272-4770. The examiner can normally be reached on Mon-Fri from 6am-3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Michael Peffley  
Primary Examiner  
Art Unit 3739

mp  
November 8, 2005